IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

Cr. Appeal No. 483 of 2000

Date of Decision : November 29, 2007

State of H.P. …Appellant.

Versus:

Changar Singh …Respondent.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *Yes*

For the appellant: Mr. Varinder Verma, Addl. A. G.

For the respondent : Mr. B. P. Sharma, Sr. Advocate with Mr. Sandeep Vashisht, Advocate.

Sanjay Karol, J. (Oral).

The present appeal arises out of the judgment dated 1.3.2000 passed by the Special Judge, Kangra at Dharamshala, in Corruption Case No. 3-D/97 titled as Changar Singh v. State, acquitting the accused of the charged offence.

As per the case of the prosecution, accused Changar Singh was posted as Patwari Consolidation in Patwar Circle, Dheera, Tehsil Palampur, Distt. Kangra, H.P. In the month of March, 1994, village Panapur Kholi was under consolidation. Shri Janak Ram (PW-1), Shri Ranbir Singh (PW-2), and Shri Udham

---

Whether reporters of Local Papers may be allowed to see the judgment?

Singh and others were joint owners of land comprising Khasra Nos. 629 and 632 forming part of village Panapur Kholi. During the partition proceedings pertaining to the said land, PW-1 approached the accused for getting Khasra No. 632 reserved for himself and his brother PW-2. On 21.3.1994, PW-1 visited the Patwarkhana, the office of the accused, where the accused demanded a sum of Rs.1000/- for doing the needful. Showing his inability, the accused asked him to bring Rs.300/- on the following day. PW-1 narrated the incident to his brother PW-2 who refused to pay the amount to the accused. On the following day, both PW-1 & PW-2 approached the office of the Anti Corruption Branch at Dharamshala (Dari) and FIR No. 2/94 dated 22.3.1994 (Ext.PW-1) was registered with Police Station, Anti Corruption Zone, Dharamshala. Currency notes of Rs.300/- of denomination of Rs.50/- each were supplied by PW-1 to the police officials vide seizure memo Ext.PW-1/D. The revenue record was seized vide seizure memos Ext.PW-1/B Ext.PW-1/C. Currency notes were treated with Phenol pathaline powder and demonstration of the action and reaction of the powder sodium carbonate and phenol pathaline was given vide furd Ext.PW-1/E. PW-1 was instructed to hand over the currency notes to the accused on demand and PW-2 was deputed to act as a shadow witness. At about 9 A.M., the police party consisting of Shri Santokh Singh (PW-10), Shri Onkar Singh (PW-9), HC Bali Ram, Inspector Kehar Singh including PW-1 & PW-2 proceeded towards Patwarkhana. Upon

reaching the Patwarkhana, PW-1 was asked to approach the patwari and PW-2 was asked to keep watch on PW-1. The remaining raiding party stayed away at a distance of 20 mtrs. behind the bushes near Patwarkhana. Just as PW-1 handed over a sum of Rs.300/- to the accused, PW-2 signalled to the raiding party who came at the spot and having seen the police party, the accused threw away the currency notes on the slab of the roof of the Ist floor and started getting down the stairs of the Patwarkhana. In the meantime, one Kehar Singh (PW-10) reached the site. PW-10 asked for a jug of water, thali (plate) and a glass. After carrying out the necessary formalities, he got sodium carbonate mixture prepared in the water and after giving demonstration to the raiding party, the accused was asked to wash his hands and the colour of mixture turned pink. Sample of the said mixture was taken into possession and sent for chemical examination. The currency notes were seized vide memo Ext.PW-1/E and were compared with seizure memo Ext.PW-1/D. The report of the Chemical Examiner Ext.PW-10/B was obtained during the course of the investigation. With the completion of the investigation, challan was presented in the Court for trial. Sanction for prosecution Ext.PW-11/A was also obtained.

The accused was charged for an offence under Section 7, 13(1)(d), punishable under Section 13(2) of the Prevention of Corruption Act. The accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined 11 witnesses and the statement of the accused u/s 313 Cr.PC was also recorded. In his defence, the accused examined one witness.

Considering the material on record, the Court below acquitted the accused of the charged offence for the reason that the accused had no authority or jurisdiction to decide the issue of partition of the property and in any event the partition proceedings stood concluded prior to the date of the alleged occurrence of the incident and that the sanction to prosecute was not in accordance with law.

From the statement of Shri Prem Singh (PW-3), it is clear that the accused was posted as Patwari at the relevant time. Shri Desh Raj **(**PW-4) is the Patwari who has proved the revenue record pertaining to the complainant's land being jamabandi Nakal register Ext.PW-4/A, proceedings regarding partition Ext.PW-4/B & Ext.PW-4/C. In his cross-examination, this witness has categorically admitted that the partition proceedings stood concluded by the Assistant Consolidation Officer on 16th & 17th March, 1994. Perusal of Ext.PW-4/A, Ext.PW-4/B & Ext.PW-4/C would show that khasra No. 632 was partitioned in favour of Shri Udham Singh real brother of PW-1 & PW-2 and Smt. Manjoo Devi, mother of PW-1, PW-2 and Shri Udham Singh. This fact is also evident from the statement of PW-4 who has also stated that the Patwari does not have any role in partition proceedings nor does he has the power to change the khasra numbers allotted by the

Assistant Consolidation Officer in the partition during consolidation proceedings.

S/Shri Rattu Ram (PW-5), Joginder Singh (PW-6), Bhanwar Singh (PW-7) & Bali Ram (PW-8) are formal in nature. Shri N.C. Sood (PW-11) is the person who has accorded prosecution sanction vide sanction order Ext.PW-11/A.

The remaining witnesses are S/Shri Janak Ram (PW-1), Ranbir Singh (PW-2), Onkar Singh (PW-9) and Santokh Singh (PW-10). Both PW-1 & PW-2 have supported the case of the prosecution. PW-9 & PW-10 have proved the fact of having seized the currency notes and also the revenue papers and the fact that they carried out the investigation in the case.

It has come on record through the evidence of PW-4 as also the documentary evidence (Ext.PW-4/A, Ext.PW-4/B & Ext.PW-4/C) that the partition proceedings between PW-1 & PW-2 on one hand and their mother and another real brother on the other hand stood concluded by a superior officer on 17.3.1994 i.e. at least 5 days prior to the date of occurrence of the alleged offence. PW-9 & PW-10 are the police officials and PW-1 & PW-2 are real brothers and interested witnesses. The trap was laid by the police in broad day light and at a place which is highly populated. There is no explanation on record as to why no independent witness was associated by the prosecution at the stage when the trap was laid down by the raiding party pursuant to the complaint filed by PW-1. In this background, the

deposition of PW-1 & PW-2 needs to be examined. PW-1 & PW-2 by and large have supported the case of the prosecution. However, they were real brothers and interested persons and had a cause of grievance against the accused as they were trying to seek an undue favour from the accused who in any case was not empowered to reserve a particular area for them. In his statement recorded u/s 313 Cr.PC, the accused has categorically stated that PW-1 & PW-2 used to visit him during consolidation proceedings and always wanted him to favour them by allotting khasra No. 632 in their favour. While answering to questions No. 34, the accused has specifically stated as under:-

> "Q.No.34. Do you want to say anything else?
>
> Ans: I am innocent. Janak and Ranbir used to come to me during consolidation proceedings and always asked me to allot Kh. No. 632 in their favour, but I always advised them that allotment of filed number is in the hands of Consolidation Officer and I have no powers in this regard. Two three days before the occurrence both the above said brothers came to me in the Patwarkhana and told me that I am in collusion with their brother Udham Singh and helping him. They threatened me for dire consequences. Out of this grouse, they falsely implicated me in the present case.
>
> Q. Why the prosecution witnesses have deposed against you?
>
> Ans: PW-1 and PW-2 were harbouring grouse against me for the reasons stated above and in order to take revenge, they have falsely deposed against me. The other witnesses are police officials who are interested in the success of their case."

Shri Kehar Singh (DW-1) was cited as prosecution witness but was not examined as such and given up by the prosecution during the trial without any reason. He was nonetheless examined by the accused and he has categorically deposed that at the relevant time he was the Up-Pradhan and President of the Consolidation Committee. He has stated that on 22.3.1994 at about 9.30 A.M. he was going towards Patwarkhana when upon reaching the same, he heard some noise coming from the first floor of the Patwarkhana. He saw 4 to 5 persons standing in the verandah in civil clothes and two persons were holding the accused by his arm. He found that on the table, kept in the verandah, there were two polythene bags, one jug, one glass and one Thali (plate). One Karam Chand also reached the spot and one person went inside the residential room of the Patwari and after searching the room came out as nothing was found and recovered from there. Thereafter, another person came and informed that he had found some currency notes in the form of bundle from the roof. He was asked to count the currency notes which were counted by him. Thereafter, his hands were got washed in Thali with the water from the jug lying on the table. The water was thrown out but the Thali was not washed and some contents of the water remained in the Thali and in the same Thali the hands of the Patwari were also got washed. The hand washed water turned its colour and sample thereof was taken by the police.

Shri Kehar Singh, the only independent witness, a respectable member of the Community, was the witness to the recovery of the currency notes seized vide recovery memo Ext. PW-1/D. Why this witness was left out by the prosecution has not been explained. This itself casts a doubt about the prosecution story. Further, this witness has been cross-examined and there is nothing which would impeach the credibility of this witness. He is a respectable member of the society holding an important position. He is 60 years of age. There is no reason for this witness to have falsely deposed in the Court in favour of the accused. From his statement, it is clear that the procedure adopted by the police for collecting the sample of the water Chemical was faulty. The raiding party had to ensure that no contents of the hand washed sample of this witness remained in the Thali prior to getting the hands of the accused washed in the same. Further this witness has mentioned that some persons had entered into the residential room of Patwari and came back without having recovered anything from there. He has also mentioned that the currency notes were found by another person on the roof of the Patwarkhana. This witness has also named Karam Chand to be present at the spot. The presence of Karam Chand is also stated by PW-2 in his cross-examination. Therefore, why Karam Chand was not associated by the prosecution during investigation or examined in Court also raises a doubt in the prosecution story. Further, the two persons whose

presence at the spot is also mentioned have not been examined by the prosecution. In totality it totally renders the prosecution case to be false.

In Court PW-1 has deposed that the accused was caught by the police on the stair case while getting down. He was confronted with his statement Ext.DA where no such fact was recorded but it was so recorded that the accused was caught in the verandah. PW-2 was also confronted with his statement recorded by the police u/s 161 Cr.PC to the same effect. He was further confronted with his statement recorded by the police Ext.DB. Importantly, PW-2 has not denied the suggestion put to him that the accused had told PW-1 that he could not do his work as he was not competent to do anything.

Apart from the fact that PW-1 & PW-2 were interested witnesses even otherwise their testimony does not inspire confidence for the reason that they have contradicted themselves and also there is contradiction between the statements of the official witnesses. Whereas PW-9 has stated that he carried out the personal search of PW-1 and thereafter put the currency notes in his pocket and was made to understand not to tamper with the said currency notes but PW-1 on the other hand has categorically stated that it was he who had himself put the currency notes in his own pocket. PW-1 is absolutely silent about his personal search. As per version of PW-1 only one hand of the accused was got washed by the police whereas as per PW-2 the hands of the

accused were got washed by the police. The improvements and the contradictions keeping in view the totality of the circumstances cannot be said to be insignificant.

From the material on record, it is clear that the accused was not in a position to grant favour to PW-1 and PW-2 and carry out the correction in the revenue record as he was not empowered and authorised to do the same. The partition proceedings during consolidation operation stood concluded by the superior officer i.e. Assistant Consolidation Officer. In this background, the defence taken by the accused appears to be absolutely plausible as PW-1 & PW-2 were genuinely harbouring a grudge and grievance against the accused.

If the accused was powerless and there was no proceeding pending as on the date of the commission of the alleged offence, there was no occasion for the accused to have made any demand. The testimony of PW-1 & PW-2 is not corroborated by any independent witness and there is no explanation as to why no such witness particularly Karam Chand was associated by the prosecution agency. The offence is alleged to have taken place in broad day light and in thickly populated area. The statements of the prosecution witnesses cannot be relied upon to prove the guilt of the accused beyond reasonable doubt.

Learned counsel for the parties have further pressed their respective contentions with regard to the legality of

prosecution sanction accorded by the concerned authority. The trial Court has also held that the sanction accorded by the prosecution was not in consonance with the law laid down by the Apex Court in that regard. However, keeping in view my decision of the case on merits, I am not going into the question of the legality of the prosecution sanction.

The accused has had the advantage of having been acquitted by the Court below. The Court has considered the entire material. I see no perversity in the appreciation of the material on record.

For all the aforesaid reasons, I find no reason to interfere with the findings and the judgment passed by the Court below. The appeal is accordingly dismissed. The bail bonds of the accused stand discharged.

(Sanjay Karol),
Judge.

November 29, 2007.
(rana)